In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 793

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and HOBOKEN MANUFACTURERS' RAILROAD COMPANY, appellants

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellants submit herewith their statement showing the basis of this Court's jurisdiction in the above-entitled cause:

A

STATUTES

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 939) paragraph (4) (U. S. C. Title 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 219, 220; U. S. C. Title 28, Sec. 47a).

B

DECREE

The decree sought to be reviewed was entered on December 19, 1930 (R. 87, 88.)[1]

The petition for appeal was filed and the order allowing the appeal was entered February 16, 1921. (R. 92, 93.) Notice of appeal with service acknowledged was filed on February 17, 1931. (R. 99.) The case was docketed in this Court on March 14, 1931.

C

THE NATURE OF CASE AND RULING BELOW

This suit was brought to enjoin, set aside, suspend, and annul certain orders of the Interstate Commerce Commission made (R. 3) and entered November 5, 1927 (R. 155, 160, 161), May 7, 1929 (R. 269, 302, 303) and February 4, 1930 (R. 312, 313), respectively, in a proceeding known as Docket 19973, *Hoboken Manufacturers' Railroad Company, complainant, v. The Atchison, Topeka & Santa Fe Ry. Co., et al., defendants*, 132 I. C. C. 579; 156 I. C. C. 330.

The proceeding before the Commission was instituted by the Hoboken Manufacturers' Railroad Company by complaint for the purpose of obtaining a just, reasonable, and equitable division of a

[1] All references in the record are to the pages of the certified transcript of record prepared by the Clerk of the District Court and filed with the Clerk of this Court. The record is not printed.

joint through rate for the transportation of [illegible] from Pacific Coast ports to [illegible]

A hearing (R. 122–206) and rehearing (R. [illegible]–396) were had before the Commission and three orders were issued by the Commission, all of them determining and prescribing for the [illegible] an increased division of the joint through rate involved. (The first order, R. 267; the second order, R. 395, 396; the third order, R. 406–407.)

The appellees in their petition to the court below alleged, *inter alia*, that all three orders of the Commission were invalid because not supported by sufficient evidence and because the Commission had failed to comply with the requirements of Section 15(6) of the Interstate Commerce Act. It was also alleged that the first two orders issued by the Commission were invalid because they were given retroactive effect in violation of said Section 15 (6) of the Interstate Commerce Act.

Hearing was had before a statutory court in which sat Circuit Judge Davis, and District Judges Runyon and Aviz. (R. 77.) A full opinion was given (R. 77) holding that the first two orders of the Commission were null and void, and a final decree was entered permanently annulling, enjoining, and setting them aside. The third order was held valid. (R. 87, 88.)

D

CASES

Brimstone R. R. Co. v. *U. S.*, 276 U. S. 104; *U. S.* [illegible] *& So. Ry. Co.*, 265 U. S. 276; *New Eng-*

Division Case, 261 U. S. 184; *Beaumont, Sour Lake & Western Ry. Co.* v. *U. S.*, 282 U. S. 74.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of the aforementioned statutes set out in paragraph A of this

THOMAS D. THACHER,
Solicitor General.

ELMER B. COLLINS,
Special Assistant to the Attorney General.

J. STANLEY PAYNE,
Assistant Chief Counsel,
Interstate Commerce Commission.

PARKER MCCOLLESTER,
Solicitor for Hoboken Manufacturers' Railroad Company.